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### REMARKS

Claims 1-28 and 34-40 are pending in the present application. Claims 1-20 and 40 are currently withdrawn from consideration as directed to a nonelected invention. Claim 21 is canceled herein without prejudice, and claims 22, 23, 25, 26 and 34-39 are amended herein for clarity, to more particularly define the invention. Applicants submit that no new matter is introduced by these amendments and their entry and consideration are respectfully requested. In light of these amendments and the following remarks, Applicants respectfully request reconsideration of this application and allowance of the pending claims to issue.

#### Rejection of Claims 23 and 34 under 35 U.S.C. §112, second paragraph

The Office Action states that claims 23 and 34 stand rejected as allegedly being indefinite. With regard to claim 23, the Office Action alleges that it is not clear if Applicants intend to claim a nonwoven web which comprises each of carded, spunbond, SMS and SMMS fabrics, or if the claim is intended as a Markush-type claim. With regard to claim 34, the Office Action alleges that reciting a product containing the elastic nonwoven web of claim 21 does not seem to further limit the claim since the product could be the elastic nonwoven web itself.

Claim 23 is amended herein to clarify that the nonwoven precursor is selected from the group consisting of carded, spunbond, SMS and SMMS fabrics.

Claim 34 is amended herein to replace the term "product" with the term "article."

Thus, Applicants respectfully submit that the present rejection is overcome and respectfully request that the rejection be withdrawn.

#### Rejection of Claims 21, 23-25 and 34-39 under 35 U.S.C. §102(b) as anticipated by JP '490

The Office Action states that claims 21, 23-25 and 34-39 stand rejected under 35 U.S.C. §102(b) as allegedly anticipated by JP 09285490 ("JP '490"). The Office Action alleges that JP '490 discloses an elastic nowoven web comprising a biocomponent fiber which comprises polypropylene and an elastomeric component. *Office Action*, page 3.

Claim 21 is herein canceled without prejudice, and claims 23-25 and 34-39 no longer

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depend from claim 21. Therefore, this rejection is now moot. Applicants respectfully request that the present rejection be withdrawn.

**Rejection of Claims 22-25 under 35 U.S.C. §102(b)/103(a) in view of JP '490**

The Office Action states that claims 22-25 stand rejected under 35 U.S.C. §102(b) as allegedly anticipated by or, in the alternative, under 35 U.S.C. §103(a) as allegedly obvious over JP '490. The Office Action states that JP '490 discloses an elastic nonwoven fabric, but does not disclose the particular elongation and recovery set forth in claims 22 and 23. *Office Action*, page 3. However, the Office Action alleges that "...since JP '490 teaches the same structure, it is reasonable to presume that the material of JP '490 would necessarily have the same properties." *Office Action*, page 3.

Claim 22 as presented herein recites an elastic thermally bonded nonwoven web which has an elasticity in the cross direction of at least 70%-recovery from a 100% elongation, and at least 60% recovery from a 150% elongation, said web being obtained or obtainable by a process comprising the following steps: (a) providing a thermally bonded nonwoven precursor web containing thermoplastic fibers; and (b) subjecting the precursor web of step (a) to a drawing treatment in a machine direction at a drawing rate of from 45 to 70 %, and a strain rate within a range of from 1000 to 2400 %/min at a temperature between the softening point and the melting point of the fibers for preparing the elastic thermally bonded nonwoven web.

Applicants respectfully submit that JP '490 does not teach an elastic thermally bonded nonwoven web with the same structure as the web recited in claim 22. Applicants submit that the process recited in claim 22 creates an elastic thermally bonded nonwoven web with a particular structure, a structure that is **not disclosed** in the teachings of JP '490. In the process set forth in claim 22, the heating of the thermally bonded precursor web to a temperature between the softening temperature and the melting point, and then applying a draw in the machine direction to transversely consolidate the web, produces a web wherein the majority of the fibers are extended and aligned predominantly in the direction of the draw. Thus, upon cooling the web, the fixation of fibers, in the longitudinally extended configuration at the thermally bonded

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points creates a position memory. Therefore, the web expresses recovery when stretched in a transverse direction. As the elastic nonwoven fabric described in JP '490 was not prepared by this method, its fibers will not be extended in the same manner, and thus the nonwoven fabric of JP '490 does not have the same structure as the thermally bonded nonwoven web recited in claim 22.

Furthermore, Applicants respectfully point out that JP '490 does not describe a nonwoven web with an elasticity in the cross direction of at least 70% recovery from a 100% elongation, and at least 60% recovery from a 150% elongation. There is no teaching or suggestion in JP '490 of a web that has this property. As described above, the structure of the web recited in claim 22 is different than the elastic nonwoven fabric described in JP '490, and so therefore it cannot be assumed that the elastic nonwoven fabric in JP '490 has the same properties as the web recited in claim 22.

Thus, Applicants respectfully submit that JP '490 does not anticipate claim 22. Furthermore, as claims 23-25 depend from claim 22, Applicants respectfully submit that JP '490 also does not anticipate claims 23-25. Applicants respectfully request that the rejection be withdrawn.

**Rejection of Claims 21, 22, 26-28, 35-39 under 35 U.S.C. §102(b) as anticipated by Erdos**

Claims 21, 22, 26-28 and 35-39 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent Application Publication No. 2002/0056510 to Erdos et al. ("Erdos"). The Office Action alleges that Erdos discloses an elastic nonwoven fabric laminate, wherein the laminate has a CD elongation of at least 120% and recovery of at least 80% after elongation of 100%. *Office Action*, page 5.

Claim 21 is canceled herein without prejudice, thus rendering the present rejection moot as it applies to this claim. Thus, the rejection will only be discussed with reference to claims 22, 26-28 and 35-39.

Claim 22, as presented herein, recites an elastic thermally bonded nonwoven web which has an elasticity in the cross direction of at least 70% recovery from a 100% elongation, and at

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least 60% recovery from a 150% elongation, said web being obtained or obtainable by a process comprising the following steps: (a) providing a thermally bonded nonwoven precursor web containing thermoplastic fibers; and (b) subjecting the precursor web of step (a) to a drawing treatment in a machine direction at a drawing rate of from 45 to 70 %, and a strain rate within a range of from 1000 to 2400 %/min at a temperature between the softening point and the melting point of the fibers for preparing the elastic thermally bonded nonwoven web.

Applicants respectfully submit that Erdos does not anticipate claim 22 at least because 1) Erdos does not describe an elastic thermally bonded nonwoven web with at least 60% recovery from a 150% elongation; and 2) Erdos does not describe a nonwoven web formed by the recited process, and thus does not describe a nonwoven web with the same structure as the web recited in claim 22. The Office Action states that the laminate of Erdos has a CD elongation of at least 120% and recovery of at least 80% after elongation of 100%, but does not even address the second element of claim 22, the recitation that the nonwoven web has an elasticity in the cross direction of at least 60% recovery from a 150% elongation. Furthermore, claim 22 includes the recited processing steps which provide the resultant nonwoven web with a particular structure, a structure which is not described in Erdos (as discussed in detail below).

Thus, Applicants respectfully submit that Erdos does not disclose each and every element of claim 22 and therefore Erdos does not anticipate claim 22. In addition, claims 26-28 and 35-39 depend from claim 22, and so these claims are also not anticipated by Erdos. Therefore, Applicants respectfully request that the present rejection be withdrawn.

**Rejection of claim 23 under 35 U.S.C. §102(b)/103(a) in view of Erdos**

Claim 23 stands rejected under 35 U.S.C. §102(b) as allegedly anticipated by or, in the alternative, under 35 U.S.C. §103(a) as allegedly obvious over Erdos. The Office Action states that although Erdos does not identically disclose the claimed processing parameters, the burden is on the Applicants to show that the processing differences result in an unobvious difference between the claimed invention and the invention of Erdos. *Office Action*, page 5.

Applicants respectfully submit that **Erdos does not teach an elastic thermally bonded**

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**nonwoven web with the same structure as the web recited in claim 22.** Applicants submit that the process recited in claim 22 creates an elastic thermally bonded nonwoven web with a particular structure, a structure that is **not disclosed** in the teachings of Erdos. As described above, in the process set forth in claim 22, the heating of the thermally bonded precursor web to a temperature between the softening temperature and the melting point, and then applying a draw in the machine direction to transversely consolidate the web, produces a web wherein the majority of the fibers are extended and aligned predominantly in the direction of the draw. Thus, upon cooling the web, the fixation of fibers, in the longitudinally extended configuration at the thermally bonded points creates a position memory. Therefore, the web expresses recovery when stretched in a transverse direction. As the nonwoven web described in Erdos was not prepared by this method, its fibers will not be extended in the same manner, and thus the nonwoven fabric of Erdos does not have the same structure as the thermally bonded nonwoven web recited in claim 22.

Furthermore, Erdos does not describe a nonwoven web with an elasticity in the cross direction of at least 60% recovery from a 150% elongation. There is no teaching or suggestion in Erdos of a web that has this property. As described above, the structure of the web recited in claim 23 is different than the laminate described in Erdos, and so it cannot be assumed that the laminate in Erdos has the same properties as the web recited in claim 23. For at least these reasons, Applicants believe this rejection has been overcome and respectfully request its withdrawal.

### **CONCLUSION**

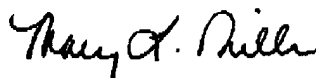
Having addressed all of the issues raised by the Examiner in the pending Office Action, Applicants believe that the claims as presented herein are in condition for allowance, which action is respectfully requested. The Examiner is invited and encouraged to contact the undersigned directly if such contact will expedite the prosecution of the pending claims to issue.

The Commissioner is authorized to charge Deposit Account No. 50-0220 in the amount

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of \$120.00 as the fee for a one month extension of time. This amount is believed to be correct. However, the Commissioner is authorized to charge any deficiency associated with this filing or credit any overpayment to Deposit Account No. 50-0220.

Respectfully submitted,



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**CERTIFICATION OF FACSIMILE TRANSMISSION  
UNDER 37 CFR § 1.8**

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office via the central facsimile number 571-273-8300 on July 10, 2006 and is addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1459, Alexandria, VA 22313-1450.

  
Carey Gregory